



N A R U C
National Association of Regulatory Utility Commissioners

ORIGINAL EX PARTE OR LATE FILED

September 1, 1999

Chairman William E. Kennard
Office of the Chairman, 8th Floor
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: FCC's "Slamming" Rules: NARUC's Opposition to the TPA Proposal As Filed and The Opportunity for Additional Federal-State Collaboration on Complaint Issues.

Ex Parte - Two Copies filed: *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 - CC Docket 94-129.*

Dear Chairman Kennard:

We write to oppose the MCI WorldCom petition to establish a third party administrator to process slamming complaints. If the FCC's slamming rules are reinstated, state commissions offer a potential forum to assist in the resolution of complaints brought by carriers asserting that they did not slam the customer and should receive payment. We commit to working with the FCC to develop an appropriate federal-state process to resolve such disputes.

On April 20th, Bob Rowe wrote you (letter attached) suggesting voluntary FCC-state commission agreements which would allow states with strong anti-slamming programs to conduct consumer protection efforts close to the customer. This approach would be consistent with the cooperative federalist framework we are working to strengthen under the Telecommunications Act. It would also build on the "SNAP" (State and National Action Plan) approach to cooperation on consumer issues. In initial discussions of this approach we explained that it could be either an alternative or a complement to a third party administrator. Our proposal today is much narrower, focusing on a necessary element of the FCC's currently-stayed slamming rules.

NARUC has participated in many constructive discussions with consumer advocates, local exchange carriers, inter-exchange carriers, and FCC staff. Each party's position has something to offer. Going forward, we should work together to capture these various strengths. Generally, we support an anti-slamming "federal floor" with states free to provide their citizens with stronger protection against all slamming. It is imperative to establish a state and federal working group that cooperatively develops specific recommendations for enforcement and consumer protection. The benefits of such a working group will serve the needs of every local community.

As you know from our previous filings, NARUC is generally opposed to the creation of the MCI WorldCom, et al., sponsored "third party administrator" (TPA) as originally proposed. As the attached resolution and previous correspondence indicate we believe that the FCC should reject MCI's original proposal. The TPA as originally proposed would not be an effective solution for reducing slamming complaints nation-wide because it would not remove the financial incentive to slam; could well result in increased costs passed to consumers though implicit or explicit charges; would not address other related

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billing complaints such as cramming, spamming and "local" slamming; and, as originally proposed, would not provide for neutral, inclusive oversight.

If the FCC's slamming rules are ultimately reinstated, it is clear that state commissions have the legal authority and ability to assist in the resolution of complaints brought by carriers asserting that they did not slam the customer and should receive payment.

NARUC believes that generally the states are in the best position to handle complaints because they are close to the consumers and familiar with carrier trends in their region. As you know, there is empirical data for some states indicating that state enforcement remedies have proven effective in reducing the number of slamming complaints. One easy way to decrease slamming incidents is for the FCC to assure its rules in no way hinder state commissions' ability to enforce all prohibitions on interstate, intrastate and local exchange slamming and all other related fraudulent and misleading telecommunications practices, including cramming.

We look forward to continuing discussion with the FCC on how best to assure that consumers have realistic access to the full panoply of relief options available under both state and federal law, with the goal (as suggested in the April 20th letter) of developing a voluntary state commission "off-ramp" for those states that wish to maximize the availability and efficacy of their ongoing anti-slamming campaigns.

Through such cooperation both federal and state jurisdictions can improve the over-all effectiveness and efficiency in resolving slamming complaints nation-wide. We also believe that cooperation must extend beyond specific enforcement remedies. We must give equal weight to expanded preventive actions which eliminate problems before they become complaints.

As always, if you have any questions about this letter, or any NARUC position, please do not hesitate to contact us.

Sincerely,



Bob Rowe
NARUC First Vice President
Chairman, Telecommunications Committee



Bill Gillis
Chairman, NARUC Consumer Affairs Committee

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cc Commissioner Susan Ness
Commissioner Gloria Tristani
Commissioner Michael Powell
Commissioner Furchtgott-Roth

Enclosures

ATTACHMENT ONE – TEXT OF APRIL 20, 1999 LETTER FROM BOB ROWE TO CHAIRMAN KENNARD

Dear Chairman Kennard:

I suggest for further discussion that the FCC and state commissions consider entering into voluntary cooperative agreements to have slamming and perhaps eventually other appropriate telecommunications-related complaints handled and resolved by state commissions. A state commission could elect to participate in the agreement. The FCC would set appropriate terms for the agreement. I suggest this as a more consumer-friendly alternative to the "Third Party Administrator" proposal as it is currently framed.

The approach I suggest will help address many concerns about third party administration of slamming complaints, including ensuring enforcement of more robust state remedies and ensuring greater consumer confidence in the procedure. It will maximize efficient use of federal and state resources, will be undertaken in the spirit of FCC-state commission cooperation which you and your colleagues have worked so hard to establish, and will be consistent with the cooperative federalism of the Telecommunications Act. Perhaps most importantly, it will ensure telecommunications consumers have available to them an effective remedy as "close to the customer" as possible.

As you know, states from Florida, to New York, to Washington, to California have undertaken aggressive consumer-protection programs. With the clarification of state authority over consumer protection provided by Congress in the Telecommunications Act, and often with the close cooperation of the FCC, states have over the last few years implemented especially effective anti-slamming education and enforcement programs. At the same time, the FCC has worked effectively within its resources to address growing consumer concerns. A state-administered program would build on these efforts and maximize efficient use of all of our strengths and resources.

As you know, many models exist for such arrangements in areas such as consumer protection, employment law, human services, civil rights, and environmental policy. Like slamming, these are all areas where both strong federal and state concerns are engaged. As a first step, a work group from the FCC and states could develop an outline and work plan for the approach. Ultimately, the FCC and individual states would enter into enforcement agreements. The FCC would set the floor for enforcement, with state law setting the ceiling. In the unlikely event that a state consumer-protection provision constituted a "barrier to entry" the FCC would have authority to address the question under Section 253.

I recognize that this approach may not be as appealing to some in the industry as would be a centralized industry-run program. Here as elsewhere, a little bit of messiness is one of the most important features of the federalist model. Further, structured interactions between state commission enforcement programs and an industry clearinghouse could be a productive part of such an approach. The defining goal, however, must be providing meaningful, effective remedies close to and accessible to customers.

I look forward to your response.

Sincerely,

Bob Rowe
Chairman, NARUC Telecommunications Committee

Hon. Susan Ness
Hon. Harold Furchtgott-Roth
Hon. Michael Powell
Hon. Gloria Tristani

Attachment 2 – NARUC's July 1999 Resolution On the TPA Slamming Proposal

WHEREAS, Telephone slamming continues to be the number one consumer complaint in telecommunications services; and

WHEREAS, The "Third Party Administrator"(TPA) proposal submitted to the FCC on March 31, 1999 would establish an independent centralized complaint center that would handle all consumer complaints on slamming nation-wide; and

WHEREAS, States share the concerns of the local and long distance industry regarding the prevalence of slamming and other fraudulent telephone practices; and

WHEREAS, The TPA as originally proposed will not be an effective solution for reducing slamming complaints nation-wide for the following reasons (recognizing that the TPA is an evolving concept, as originally proposed): (1) Will not remove the financial incentive to slam; (2) The start-up costs and the maintenance of a centralized complaint center could prove costly and could eventually get passed on to consumers though implicit or explicit charges; (3) Will not handle other related billing complaints such as cramming and spamming; and (4) Does not address local slamming and does not provide for neutral, inclusive oversight; and

WHEREAS, The TPA as proposed will hinder the PUC's ability to enforce rigorous verification requirements and tougher enforcement rules which are more stringent than the FCC rules; and

WHEREAS, States are in a better position to handle complaints because they are closer to the consumers and more familiar with carrier trends in their region, and TPA may add more confusion for consumers; and

WHEREAS, State laws authorize State commissions, as well as other State agencies with protecting the interests of consumers; and

WHEREAS, The successes and innovations of State enforcement remedies have proven effective in reducing the number of slamming complaints in each State; and

WHEREAS, To the degree that Federal and State rules are effective in reducing slamming complaints before they occur there will be a reduced need for a new bureaucracy to resolve them after they occur; now therefore be it

RESOLVED, That the Board of Directors of National Association of Regulatory Utility Commissioners (NARUC), convened in its 1999 Summer Meeting in San Francisco, California, *urges the FCC to move forward in adopting meaningful anti-slamming rules that will serve as a minimum federal floor for anti-slamming enforcement*; and be it further

RESOLVED, *That NARUC will work to make any proposal as effective as possible, it opposes the TPA as submitted on March 31, 1999. NARUC strongly urges the FCC to incorporate an optional State "off-ramp" in any future proposal. In addition, such a proposal must also include adequate consumer and State commission representation on its governance board*; and be it further

RESOLVED, That NARUC urges the FCC to act on pending petitions for reconsideration.

pponsored by Committees on Telecommunications and Consumer Affairs
Adopted by the NARUC Board of Directors July 23, 1999